UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

NATIONAL STEEL AND SHIPBUILDING COMPANY

and **Cases 21-CA-37595**
21-CA-37675

ROBERT GODINEZ, PRESIDENT, SHIPYARD WORKERS UNION, LOCAL LODGE 1998, affiliated with INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO

Lisa E. McNeill of Los Angeles, California,
for the General Counsel
Theodore R. Scott of San Diego, California,
for the Respondent

DECISION

Mary Miller Cracraft, Administrative Law Judge: The General Counsel alleges that National Steel and Shipbuilding Company (Respondent) violated its duty to bargain in good faith as set forth in Section 8(a)(1) and (5) of the National Labor Relations Act[1] by unreasonable delay in providing certain information to Shipyard Workers Union, Local Lodge 1998, affiliated with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO (the Union). The case was tried in San Diego, California, on October 1 and 2, 2007, pursuant to a consolidated complaint issued by the Acting Regional Director for Region 21 of the NLRB on June 29, 2007.[2]

[1] Sec. 8(a)(1), 29 U.S.C. §158(a)(1), provides, in relevant part, that it shall be an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of their rights set forth in §7 of the Act, 29 U.S.C. §157 [i.e., the right, in relevant part, to bargain collectively through representatives of their own choosing]. Sec. 8(a)(5), 29 U.S.C. §158(a)(5) provides that it shall be an unfair labor practice for an employer to refuse to bargain collectively with representatives of his employees.

[2] The Union filed the original and amended unfair labor practice charges in Case 21-CA-37595 on January 5 and May 15, 2007, respectively. The Union filed the original and amended unfair labor practice charges in Case 21-CA-37675 on February 25 and May 14, 2007, respectively.

On the entire record,[3] including my observation of the demeanor of the witnesses,[4] and after considering the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following findings of fact and conclusions of law.

I. Case 21-CA-37595 – The McCurdy Grievance Information

A. Findings of Fact

Respondent constructs and repairs ships at its facility located in San Diego, California.

Respondent operates a commercial shipyard in San Diego, California, where it constructs and repairs ships. The Union represents employees in four of the Respondent's seven bargaining units. These units are known as the steel unit, the transportation unit, the carpenters unit, and the painters unit. Respondent employs approximately 3300 hourly employees in its entire operation.

The Union is the exclusive collective-bargaining representative of a unit of Respondent's steel employees.

On July 9, 2002, the Union was certified as the exclusive collective bargaining representative of the employees in the following unit of employees:

> All full-time and regular part-time iron, steel and metal products fabrication employees including layout men, shipbuilders, template makers, pipewelders, code welders, shipfitters, sheetmetal fitters, welding maintenance persons, welders, burner CM operators, riggers, tank testers, machine operators A, crane operators DT, burners, blacksmiths, chippers, acid tank men, machine operators B, galvanizers, material chasers, line heaters, rod shack attendants, helpers and trainees employed by [Respondent] at and out of its facility located at Harbor Drive and 28th Street, San Diego, California; excluding all other employees, temporary employees, office or clerical employees, draftsmen, engineering employees, watchmen, guardfire inspectors, painters, teamsters, operating engineers, moulder-foundry workers, machinists, electricians, shipwrights, marine loftsmen, waysmen, wood caulkers, erection employees, installation employees, construction employees, professional employees, guards and supervisors as defined in the Act.

The Union is the exclusive collective-bargaining representative of a unit of Respondent's transportation employees.

I take administrative notice that on August 6, 2002, the Union was certified as the exclusive collective-bargaining representative of employees in the following appropriate unit:

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[3] General Counsel's Motion to Strike additional documents attached to Respondent's Brief is granted. The documents were not presented at the hearing. Respondent's unopposed Motion to Correct Transcript is granted.

[4] Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

> All full-time and regular part-time dispatchers, semi-truck drivers, trailer train operators (pulling 5 or more trailers), fork flat bed trailer drivers (10 tons or over), lumber carrier operators, truck drivers (less than 10 tons – non-semi), fork lift operators (15,000 lbs. & over) and warehousemen employed by [Respondent] at and out of its facility located at Harbor Drive and 28th Street, San Diego, California; excluding all other employees, temporary employees, executives, administrative and professional employees, office and clerical employees, first aid and safety employees (except unit employees who may perform first aid functions in addition to their regular duties), guards and supervisors as defined in the Act.

Pursuant to implementation of Respondent's last, best and final offer on December 21, 2003, the parties have a two-step grievance procedure covering employees in the four units represented by the Union.

By letter of December 12, 2003, Respondent notified the Union that it would implement all economic proposals set forth in its last, best and final offer. The letter also announced that Respondent would implement certain tentatively agreed upon non-economic terms of its last, best and final offer. Included in the unilaterally implemented non-economic terms was a grievance procedure. Respondent implemented Steps One and Two. Step One entails filing the grievance with the employee's supervisor. If the grievance is not satisfactorily adjusted within two working days, it is then reduced to writing and submitted at Step Two to a Company Employee Relations Representative. Respondent did not unilaterally implement any provision for arbitration.

Following the discharge of telescopic boomlift operator leadman Sean McCurdy on October 12, 2006, the Union filed a grievance on October 17, 2006 seeking reinstatement and backpay.

On October 12, 2006, Respondent discharged telescopic boomlift operator leadman Sean McCurdy for "falsification of company records and reports." The decision was based, at least in part, on a Security Log[5] kept by Respondent at Gate 2 indicating that Mr. McCurdy left the facility at 4:17 p.m. on August 14, 2006, with a destination of 32nd Street and returned at 9:09 p.m. Under "Pass #," the log indicated "VAN." The decision was also based, at least in part, on a report that Mr. McCurdy was seen in a NASSCO red truck at a metal scrap yard at the time he was, according to the Security Log, reporting to 32nd Street on company business. On October 17, 2006, the Union filed a grievance regarding the discharge (the McCurdy grievance).

Union president Godinez testified on direct and cross examination that Mr. McCurdy was a member of the transportation unit and denied that Mr. McCurdy was a member of the steel unit. On the other hand, Anna Cooper, supervisor of employee relations, testified that Mr. McCurdy was a member of the steel unit. Both witnesses testified credibly regarding their perception of Mr. McCurdy's unit placement. Obviously, one of them is mistaken. However, there is limited independent evidence on the record to resolve this issue. Mr. McCurdy's job title might lead one to believe that he was employed as a boomlift operator, a classification that is not specified in either the transportation or the steel unit. Mr. McCurdy's name is present on the

[5] The Union utilized the term "Security Log" to denote the log kept by Gate guards indicating ingress and egress at a particular gate. The actual document is entitled "Vehicle Register." However, the complaint also utilizes the terms "Security Log" for this document. For consistency purposes, this document will be referred to as a "Security Log."

Security Log in evidence as driving through Gate 2 on several occasions while on company business. From this, one might infer that he engaged in driving functions for Respondent, which activity most aptly fits within the transportation unit. In the circumstances of this case, however, I do not find it necessary to resolve the question of Mr. McCurdy's unit placement.

The complaint alleges and Respondent admits the Union's status as exclusive collective-bargaining representative of an appropriate unit of steel employees. The representative status of the Union in an appropriate unit of transportation employees was not alleged. However, that issue was fully and fairly litigated in this proceeding. Accordingly, I find the Union is the exclusive collective-bargaining representative of Respondent's employees in both the steel and the transportation units. Further, the relevance of the requested information to the Union's performance of its duties applies to both the transportation and steel units. Thus, regardless of Mr. McCurdy's unit placement, the issue of Respondent's duty to timely provide information regarding the McCurdy grievance is ripe for decision on the merits.[6]

Pursuant to the McCurdy grievance, Respondent provided the Union with Mr. McCurdy's termination notice, one page of the August 14, 2006 Gate 2 Security Log, and a Post-It note memo stating that Mr. McCurdy was seen in a NASSCO red truck at a metal scrap yard rather than at the destination stated in the Security Log.

Along with the McCurdy grievance, the Union requested it be provided, "all the evidence [Respondent] is relying on to terminate Mr. McCurdy." About one week after receiving the information request in the grievance, Respondent provided the Union with Mr. McCurdy's October 12, 2006 termination notice as well as one page of the Gate 2 Security Log for August 14, 2006.

The record references two gates at the NASSCO facility which may be utilized by vehicles. These are Gates 2 and 5. Additionally, the record references two types of company vehicles which may be utilized by employees. One such vehicle is a NASSCO red truck. Another is a NASSCO van. The Gate 2 Security Log, which is maintained by the gate guard, indicated that a company van driven by Mr. McCurdy departed Gate 2 on August 14, 2006, at 4:17 p.m. with the stated destination of 32d Street and returned to the facility via Gate 2 at 9:09 p.m. A Post-It note affixed to the Security Log stated that an employee of the A-to-Z Car Dismantling and Metal Scrap Yard had seen Mr. McCurdy "during this time drive up in a red truck from NASSCO."

On October 25, 2006, the Union requested the Gate 5 Security Log.

Union president Godinez met with Anna Cooper, Respondent's supervisor of employee relations, around October 25, 2006 to discuss the information that had been provided pursuant to the grievance. In addition to the information already provided, Mr. Godinez asked for the Gate 5 Security Log for August 14, 2006.[7]

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[6] Respondent moved to dismiss the McCurdy Grievance Information allegations on grounds that the information requested is not relevant to the Union's duties with regard to the Steel Unit. Consistent with my findings, the motion is denied.

[7] Mr. Godinez also requested the statement from the A to Z employee as well as Mr. McCurdy's time sheets for August 14, 2006. The complaint does not include allegations regarding these information requests.

On November 1, 2006, the Union made a request for further information.

By letter of November 1, 2006, the Union requested the following information:

- The Security Log showing what time Gate 5 closed on August 14, 2006.
- The contact information for the guards who worked at Gate 2 and Gate 5 on August 14, 2006, during the hours of 4:17 p.m. to 9:09 p.m.
- The Ignition Key Control Log for both the NAASCO van and red truck for August 14, 2006.

On November 13, 2006, the parties held the final step of the grievance procedure. At or before this meeting, the Union was informed that no Gate 5 Security Log existed. Contact information for security guards at Gates 2 and 5 was not provided prior to or at the final step of the grievance process. The Ignition Key Control Log for the red truck was provided to the Union at the final step of the grievance proceeding. There is no Ignition Key Control Log for the van but there is no indication on the record that prior to or at the Step 2 grievance meeting, the Union was told about the nonexistence of this document.

On November 13, 2006, the parties met to discuss the grievance at Step Two, the final step. None of the information requested verbally on October 25 or by letter of November 1, 2006, had been produced at the time of the Step Two meeting.

- Gate 5 Security Log

Regarding the Gate 5 Security Log, Mr. Godinez testified that Ms. Cooper stated that she was not sure that Gate 5 was open at night. She opined that if the Gate was closed at the end of the day shift, i.e., 3 p.m., there would be no Security Log. She stated, according to Mr. Godinez, that she would look into the matter further. Mr. Godinez denied that Ms. Cooper informed him that such a log did not exist.

Ms. Cooper's recollection was different. She emphatically testified that she told Mr. Godinez either before or at the Step 2 grievance meeting that there was no Security Log for Gate 5.[8] She recalled conferring with security sergeant Max Baiza when she initially received the November 1 information request. Mr. Baiza told her that there was not a Security Log for Gate 5. Ms. Cooper testified that she may have relayed this information to Mr. Godinez prior to the Step Two grievance meeting. Ms. Cooper's notes also reflect that she gathered information about Gate 5 in preparation for the Step 2 grievance meeting. Although I found both Mr. Godinez and Ms. Cooper to be thoughtful and sincere witnesses, based upon Ms. Cooper's testimony and her contemporaneous notes, I find that she told Mr. Godinez at or before the Step 2 meeting that there was no Gate 5 Security Log.

[8] Q: Okay. And do you recall approximately when you gave him that information about Gate 5?
A: I don't know for sure.
Q: Was it before or after the Step 2 grievance meeting?
A: I would say before.
Q. Okay. Could it have been at the Step 2 grievance meeting?
A: It could have been. It was not after. I know that. It would have been either before or during.

- Contact Information for Guards at Gates 2 and 5 on August 14, 2006

Mr. Godinez recalled telling Ms. Cooper at the November 13 meeting that he needed the Gate 2 and 5 guards' contact information in order to clear Mr. McCurdy, noting that Mr. McCurdy insisted he did not leave in a company vehicle on August 14, 2006, and did not use Gate 2 or Gate 5. Ms Cooper's testimony was somewhat inconsistent. Ms. Cooper testified that she told Mr. Godinez that the guard who signed the security log was the one to contact.[9] She also stated that she did not initially notice the request for contact information for the guards and as a result, she did nothing about this request. Ms. Cooper did not recall any discussion of this information request during the Step Two meeting. In any event, the contact information was not provided to the Union as of November 13, 2006, the date of the Step 2 grievance meeting. Ms. Cooper agreed that she obtained this information from security sergeant Baiza after the unfair labor practice charge was filed in April 2007.

- Ignition Key Control Log for NASSCO Red Truck and Van

At the meeting on November 13, Mr. Godinez reiterated his request for the Ignition Key Control Log for the red truck. According to Mr. Godinez, Ms. Cooper said she would look into getting it. On the other hand, Ms. Cooper testified that she provided the Ignition Key Control Log for the red truck during the Step Two grievance meeting. She also recalled advising Mr. Godinez that the log was not strictly regulated and might be inaccurate. Ms. Cooper's recollection regarding the red truck Ignition Key Control Log is bolstered by records she maintained in the ordinary course of business. For instance, she maintained a faxed copy of the red truck Ignition Key Control Log showing that it was faxed to her from within NASSCO on November 13 at 2:31 p.m., during the course of the Step Two meeting. Her handwritten annotation indicates that it was given to the Union. Given the corroborating documentary evidence, I accept Ms. Cooper's testimony in this regard.

Ms. Cooper's testimony regarding discussion of an Ignition Key Control Log for the NASSCO van during the Step 2 grievance meeting was not so unambiguous. She testified that there was no mention of an Ignition Key Control Log for the NASSCO van during the Step 2 grievance meeting: "I don't remember it coming up [prior to April 2007] or him verbally asking me specifically about the van."

On direct examination, Ms. Cooper testified as follows:

> Q: Okay. Did you ever tell [Mr. Godinez] that the company was not going to provide the ignition key control log?
> A: For the truck?
> Q: For anything, any ignition key control log.
> A: I told him that, if I had anything – I gave him the truck and that's all I remember telling him about it – and, if I could get something, I would get it for him.

On redirect examination, however, Ms. Cooper testified further,

> Q: When was the first time you checked to see if there was an ignition key control

[9] Mr. Godinez testified that he could not read the guard's signature on the Security Log. Moreover, the record establishes that some guards were employees of Respondent and some were employees of a subcontractor.

> log for a NASSCO van? Was it before or after the Step II meeting?
> A: It would have been after. I would have called Dilucente for the truck to see where we had it and that's why I would call him first, and he sent me to the guy that was next door.
> Q: Okay. But, when he sent you [to] the guy that was next door, that was prior to the Step II grievance meeting?
> A: That was prior to the Step II grievance hearing.
> Q: Okay. And then you relayed the information you received to Mr. Godinez before or at the Step II meeting, correct?
> A: Correct.

When considered in light of the entire record, the testimony quoted above is ambiguous. Ms. Cooper unambiguously testified that she checked for an Ignition Key Control Log for the NASSCO van both before the Step 2 grievance meeting and after in order to verify information provided in April 2007. She also clearly testified that there was no discussion of the Ignition Key Control Log for the NASSCO van at the Step 2 grievance proceeding. In testifying "Correct" to the last quoted question above, "And the information you relayed the information you received to Mr. Godinez before or at the Step II meeting, correct?" I conclude that Ms. Cooper and the questioner had different antecedents in mind for what constituted "the information you received." Therefore, I find that Respondent did not communicate the nonexistence of an Ignition Key Control Log for the van to the Union prior to April 2007.

Ms. Cooper recalled asking Dennis Dilucente in the Respondent's transportation department to locate the Ignition Key Control Log for the NASSCO van. She did this both before the November 13, 2006 Step 2 grievance meeting and again in April 2007 when the unfair labor practice charge was filed. Mr. Dilucente informed Ms. Cooper that no such log existed. Therefore, I find that Respondent did not communicate the nonexistence of an Ignition Key Control Log for the van to the Union prior to April 2007.

On November 20, 2006, Respondent denied the grievance at Step Two, the final step in the grievance process.

By memorandum of November 20, 2006, Respondent responded to the Step 2 grievance:

> The grievant was signed out as going to 32nd base. The Grievant was identified at another location during the time he said he would be at 32nd base. The Grievant was terminated for Falsification of Company records and reports, the discipline was appropriate and the Grievance is denied.

Although the Union lost the McCurdy grievance at Step Two, the Union continued to seek the requested information.

Union president Godinez explained that he hoped he would uncover exculpatory evidence if the information requested on November 13, 2006, was produced. Mr. Godinez also testified that in the past he had been able to reverse a few grievance decisions when post-arbitration proof was uncovered showing that a decision had been erroneously made.

By letter of April 18, 2007, Respondent provided some of the information which the Union requested by letter of November 1, 2006, and informed the Union that other information did not exist. Specifically, Respondent informed the Union that no Security Log showing the time Gate 5 closed on August 14, 2006, existed. Respondent provided the Union with contact information for

the August 14, 2006, guard who worked at Gate 2 during the hours of 4:17 p.m. and 9:09 p.m. Respondent provided another copy of the Ignition Key Control Log for the red truck and informed the Union that no Ignition Key Control Log for the van existed.

By letter of April 18, 2007, Respondent provided the Union with the contact information for the guard at Gate 2 on August 14, 2006 between the hours of 4:17 p.m. and 9:09 p.m. Respondent's letter further stated that there were no guards at Gate 5 on August 14, 2006. The Ignition Key Control Log for the red truck for August 14, 2006 was provided (again). Respondent's letter further stated that there was no Ignition Key Control Log for the NASSCO van. Finally, Respondent stated that there was no Security Log for Gate 5. The letter asserted that Gate 5 generally closed around 3 p.m. but could sometimes be opened for trucks after that time.[10]

Following receipt of the April 18, 2007 information, the Union continued to investigate the facts surrounding the McCurdy grievance and ultimately made a request that the grievance decision be reopened and reversed.

Union President Godinez continued to investigate the underlying grievance after receiving Respondent's April 18, 2007 proffer of information. Initially, he spoke to the guard who was stationed at Gate 2 on August 14, 2006. The guard refused to cooperate in the investigation. Next, Mr. Godinez noted that Mr. McCurdy's name was not shown on the ignition key control log for the red truck on August 14, 2006. Because Mr. McCurdy had been identified by the A to Z employee as driving the NASSCO red truck, Mr. Godinez determined that the absence of Mr. McCurdy's name on the recently provided Ignition Key Control Log for the red truck tended to prove that Mr. McCurdy was improperly discharged. Finally, Mr. Godinez spoke to the A to Z Car Dismantling and Metal Scrap Yard personnel identified in one of the April 18, 2007 letters. Mr. Godinez testified that Mr. McCurdy could not be identified by the personnel that Respondent had relied upon. Based on this information, by letter of June 1, 2007, Mr. Godinez submitted a request to Respondent's vice president of human resources asking that the grievance decision be reversed as erroneous. By letter of July 2, 2007, Respondent stated that it considered the matter closed and would not reopen the decision.

B. Conclusions of Law

There is a probability that the information requested by the Union for processing the McCurdy grievance was relevant.

A discovery-type standard, i.e., a probability of relevance, is appropriately applied to an employer's duty to provide information to a union in order to process a grievance. *NLRB v. Acme Industrial Co.,* 358 U.S. 432, 437 (1967). Information must be provided without consideration of the merits of the union's claims. *Id.* at fn. 6, citing Moore, Federal Practice ¶26.16[1], 1181 (2d ed.).

All information requested by the Union was obviously relevant to processing the grievance. In discharging Mr. McCurdy, Respondent relied primarily on a statement that Mr. McCurdy was seen in a NASSCO red truck at a scrap metal yard at a certain time. However, the Gate 2 Security Log indicated Mr. McCurdy was driving the NASSCO van

[10] The name and statement of the A to Z Car Dismantling and Metal Scrap Yard personnel who identified Mr. McCurdy were provided by and additional letter of April 18, 2007. There is no unfair labor practice allegation regarding this information.

when he left Respondent's facility at the relevant time. Any information regarding the use of Respondent's red truck during the same relevant time was clearly relevant as to whether the report relied upon by Respondent was accurate. Specifically, the Security Log for Gate 5 and contact information regarding security guards at Gate 5 were relevant to show whether any individual had taken the red truck out on August 14, 2006. As Mr. Godinez explained, he wanted to talk with the guards in order to ascertain their familiarity with Mr. McCurdy and the procedures utilized in completing the Security Log. This was a clearly relevant line of questioning.

Equally relevant was information that might be found on an Ignition Key Control Log for the van. Had there been such a log, its pertinent notations might have affected the result of Mr. McCurdy's grievance. In making this finding of probable relevance, I am cognizant of Respondent's position that its Ignition Key Control Log are not always accurate. This does not, however, warrant failure to tell the Union that no Ignition Key Control Log existed for the van. I have found that Respondent did not provide the contact information for security guards at Gates 2 and 5 prior to the final step of the grievance procedure. Although later investigation revealed that there was no Ignition Key Control Log for the van, I have found that the Union was not informed about its nonexistence until April 2007.

Respondent failed to provide the contact information for security guards at Gates 2 and 5 in a timely manner. Respondent failed to inform the Union of the nonexistence of the van Ignition Key Control Log in a timely manner.

Information must be provided in a timely manner. In *Woodland Clinic*, 331 NLRB 735, 736 (2000), the Board stated,

> An employer must respond to the information request in a timely manner. *Leland Stanford Junior University,* 307 NLRB 75, 80 (1992). An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Valley Inventory Service,* 295 NLRB 1163, 1166 (1989).

As the Board further explained, "The duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow." *Woodland Clinic, supra,* 331 NLRB at 737, citing *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993). Factors considered in assessing whether information has been reasonably promptly provided were set forth in *West Penn Power Co.,* 339 NLRB 585, 587 (2003), enf. 394 F.3d 233 (4th Cir. 2005), as follows:

> In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. "Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993). In evaluating the promptness of the response, "the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information." *Samaritan Medical Center,* 319 NLRB 392, 398 (1995).

Neither the security guard contact information nor notice of the nonexistence of the van Ignition Key Control Log was communicated to the Union in a timely manner. Although Respondent candidly admitted that it simply overlooked the contact information request, it is immaterial that Respondent lacked bad faith or a motive to avoid production. *Champion Home Builders Co.,* 350 NLRB No. 62, fn. 7 (2007).

Respondent also notes that it provided all "truly" relevant information – the information Respondent relied upon for the discharge. It asserts that the Union was in a position to fairly represent Mr. McCurdy at the Step 2 grievance proceeding with the information already provided. However, the law does not recognize such a standard for production of information. Indeed, the Union claimed that Respondent unjustifiably discharged Mr. McCurdy and therefore the Union sought exculpatory evidence which Respondent had disregarded.

Respondent claims that because the Union did not request a postponement of the Step 2 grievance meeting, the Union must have been satisfied with the information it had received prior to the meeting. I reject this argument. The record is devoid of any evidence regarding the parties' practice with regard to postponement of the final step of the grievance procedure. Moreover, assuming that a postponement was available to the Union, I nevertheless find that Respondent unreasonably delayed production of the information. The Union needed the information for the grievance procedure. Delaying production until after the grievance procedure was exhausted was unreasonable. See, e.g., *Anheuser-Busch, Inc.,* 342 NLRB 560, 567-568 (2004), enf. sub nom. *Brewers and Maltsters, Local Union No. 6 v. NLRB,* 414 F.3d 36 (D.C. Cir. 2005). The guard contact information was straight forward and easily retrieved. The nonexistence of the van Ignition Key Control Log was also easily assessed and should have been communicated to the Union in a timely manner.

Citing *Borgess Medical Center,* 342 NLRB 1105 (2004), Respondent avers that there is no obligation to provide information once the process for which the information was sought has been concluded. In *Borgess,* the Board found that even though respondent therein failed to offer a reasonable accommodation to the union for disclosing confidential information, because the arbitration procedure was concluded, the union no longer had an on-going need for the requested information. However, in the instant case, Respondent provided the information. Thus, the issue here is whether the six-month delay from November 2006 until April 2007 was unreasonable. In light of the importance of the grievance, I find that the violation does not fall within the *de minimus* standard.[11]

II. Case 21-CA-37675 – Sheetmetal Shop Closure Information

A. Findings of Fact

Respondent constructs and repairs ships at its facility located in San Diego, California.

Respondent operates a commercial shipyard in San Diego, California, where it constructs and repairs ships. The Union represents employees in four of the Respondent's seven bargaining units. These units are known as the steel unit, the transportation unit, the carpenters unit, and the painters unit. Respondent employs approximately 3300 hourly employees.

[11] Thus, I reject Respondent's reliance on *American Federation of Musicians, Local 76 (Jimmy Wakely Show),* 202 NLRB 620 (1973).

The Union is the exclusive collective-bargaining representative of a unit of Respondent's steel employees.

On July 9, 2002, the Union was certified as the exclusive collective bargaining representative of the employees in the following unit of employees:

> All full-time and regular part-time iron, steel and metal products fabrication employees including layout men, shipbuilders, template makers, pipewelders, code welders, shipfitters, sheetmetal fitters, welding maintenance persons, welders, burner CM operators, riggers, tank testers, machine operators A, crane operators DT, burners, blacksmiths, chippers, acid tank men, machine operators B, galvanizers, material chasers, line heaters, rod shack attendants, helpers and trainees employed by [Respondent] at and out of its facility located at Harbor Drive and 28th Street, San Diego, California; excluding all other employees, temporary employees, office or clerical employees, draftsmen, engineering employees, watchmen, guardfire inspectors, painters, teamsters, operating engineers, moulder-foundry workers, machinists, electricians, shipwrights, marine loftsmen, waysmen, wood caulkers, erection employees, installation employees, construction employees, professional employees, guards and supervisors as defined in the Act.

After being advised that the sheetmetal shop (the Shop) would close by December 2006, the parties began an exchange of correspondence about information relevant to the closing.

The basic disagreement between the parties regarding this information request has to do with the number of "core" employees employed in the Shop during 2006. The Union believes that many of the 80 to 100 "core" employees were gradually phased out of the Shop beginning in January 2006 until December 2006 when the Shop was razed. Respondent asserts that there were 25-30 "core" employees in January 2006, all of whom worked until the day the Shop was razed.

Although the complaint alleges that the delay in providing information about the Shop closure began from November 15, 2006, it is relevant to consider the earlier information request exchanges regarding Shop closure. Thus, after notification that the Shop would close by December 2006,[12] the Union made its initial information request by letter of September 27, 2006. The Union also requested decision and effects bargaining regarding the Shop closure. By letter of October 9, 2006, Respondent provided a response to the Union's question, "How many employees are expected to be impacted?" as follows: "There are currently 51 bargaining unit employees working in the Shop who will be impacted." Respondent also provided, at the Union's request, the name, badge number, classification, wage rate, and last date of hire for impacted employees, which Respondent believed were the 51 bargaining unit employees working in the Shop in October 2006. Respondent provided two late October dates it was available for bargaining.

[12] The parties' disagreement about the date of this notice is immaterial and need not be resolved. Union President Godinez insists he did not learn of the imminent closure until September 13, 2006. Respondent relies on statements made to unit employees in March 2006 in the presence of a Union steward in asserting that the Union knew about the closing no later than the Spring of 2006.

By letter of October 23, 2006, the Union reiterated its initial information request of September 27 regarding the number of and information about employees who would be impacted, noting deficiencies in the previous information. The Union stated that simply providing information about the October 2006 employees in the Shop was nonresponsive because, it asserted, employees had been gradually transferred out of the Shop since January 2006 in anticipation of the closure. The letter asked that the information be provided by November 30 and noted availability for bargaining from November 1 to 17, 2006. By letter of November 3, 2006, Respondent made further responses to the information requests of October 23 and September 27. Specifically, Respondent noted that Shop closure could, in the broadest sense, impact all 146 Sheetmetal fitters because Respondent retained the right to assign any Sheetmetal fitter. Respondent also referred the Union to the attached pages of the weekly Seniority Report for October 20, 2006, which, it averred, "includes all the information you asked for." In fact, the document set forth the names, employee badge numbers, classifications, wage rates, and seniority dates for all 146 sheetmetal fitters. Finally, the letter indicated availability to bargain on November 14 and/or November 16, 2006.

By letter of November 15, the Union requested the name, employee identification number, classification, wage rate, and last date of hire for each Shop employee during the months of January through August 2006

By letter of November 15, the Union stated that Respondent's November 3, 2006 letter was not responsive to its request. The Union explained that, in its view, "impacted employees" were those who worked in the Shop since January 2006. The letter specifically requested:

> Provide the name, employee identification number, classification, wage rate, and last date of hire for each employee in the bargaining unit who will or may be affected: [as earlier specified] employees who were assigned to the Sheetmetal Shop in January, February, March, April, May, June, July, August . . . 2006 . . . .

By letter of December 1, 2006, Respondent noted its disagreement with the Union's analysis of what constituted an "impacted employee." While the Union asked for information regarding each Shop employee for the stated period, Respondent again averred that "all 146 Sheetmetal Fitters are potentially impacted because any one of them could have been assigned to the Shop in the future if it were still standing." In response to the Union's November 15 request for a list of dates when Respondent was available to meet, the letter noted that it had provided dates on two prior occasions and was also available on December 5 and 7, 2006.

The Union responded by letter of January 22, 2007, noting that it could not meet to bargain until it had the requested information and further stating,

> For the last five years, the Sheetmetal Shop has employed an average of about 100 core employees. After the announcement of the shop closure (January 2006) the Sheetmetal Shop dramatically decreased the number of core employees. Therefore the impacted employees are the core employees who were assigned to the Sheetmetal Shop in [January through August 2006].

Chookiat Chowanadandhu, sheetmetal shop production supervisor for 27 years, testified that there was a group of 25-30 employees at the Shop who worked there every day for at least 5 years, i.e., from 2001 until the Shop was razed. He agreed that these 25-30 employees were "core" employees because they had been in the Shop steadily for at least five years. The list of "current" employees provided to the Union on October 9, 2006, showed 51 employees.

Mr. Chowanadandhu identified 30 of them as "core" employees. These "core" employees worked from January 2006 until the day the Shop closed, according to Mr. Chowanadandhu. None of them were transferred prior to closure of the Shop.

On the other hand, Mr. Godinez testified that he held monthly meetings at the Shop. He estimated that about 80 to 100 employees attended the January 2006 meeting. He perceived that the number decreased throughout 2006.

The Shop was closed and razed in December 2006.

The Shop was closed and razed in December 2006. Respondent asserts that all affected employees were transferred to other work by December 4, 2006, and did not lose employment due to the closure of the Shop. Mr. Godinez testified that he does not know of any employee who was adversely affected but he has heard that there were some such employees.

By letter of January 22, 2007, the Union requested that it be furnished with the specific month that "core" Shop employees were assigned to work outside the Shop.

In addition to the above exchange, the January 22, 2007 letter from the Union to Respondent requested that Respondent furnish the Union with the specific month that "core" employees were assigned to work outside the Shop during the months of January, February, March, April, May, June, July and August, 2006.[13]

In its letter of January 26, 2007, Respondent replied, in relevant part,

> As to your request for the month that a Shop employee was assigned to work outside the Shop, the dates in the past that any particular Sheetmetal Fitter happened to work in the Shop and the dates of their subsequent reassignment out of the Shop are irrelevant.

By letter of April 23, 2007, Respondent attached payroll records for all Sheetmetal Fitters for 2006.

By letter of April 23, 2007, Respondent provided the Union with the payroll records of all Sheetmetal Fitters for calendar year 2006. Respondent explained,

> Employees working in the Sheetmetal Shop may be identified by the Cost Group 751. The attached report will also indicate when an employee moved out of the Sheetmetal Shop when the Cost Group is other than 751. The Company has previously provided to the Union each Sheetmetal Fitter's badge number, classification, wage rate, and last date of hire.

The attached records were voluminous[14] and included employees in many, if not all, locations of Respondent.

[13] The Union also requested information for September and October 2007. However, this part of the information request is not included in the complaint allegations.

[14] Mr. Godinez testified that the printout might easily have rolled out to a length of three city blocks. The last page is numbered page 2227.

Respondent does not maintain reports which set forth the exact information in the form that the Union requested.

According to Thomas Fawcett, director of labor relations, employee benefits, security and compensation, Respondent does not maintain any reports in the ordinary course of business that would show those employees who were assigned to the Shop during each of the separate months in 2006. Similarly, the company does not maintain a report that would show when employees were assigned out of the Shop into other areas of the shipyard during each month of 2006.

B. Conclusions of Law

The information requested regarding the Sheetmetal Shop Closure was presumptively relevant.

Information regarding bargaining unit employees is presumptively relevant. *Allied Mechanical Services,* 351 NLRB No. 5, slip opinion at 7, n. 31 (2007), citing *Postal Service,* 350 NLRB No. 43, slip opinion at 44 (2007). The Union's information request was for bargaining unit employees' names, identification numbers, classification, wage rate, and seniority date. This information constitutes presumptively relevant information. See, e.g., *Broadway Volkswagen,* 342 NLRB 1244, 1248 (2004), enf. sub nom. *East Bay Automotive Council v. NLRB,* 483 F.3d 628 (9th Cir. 2007)(request for list of current employees, rates of pay and job classifications constituted request for presumptively relevant information).

Respondent contends that the information sought on November 15 was neither relevant to nor necessary for the Union to engage in effects bargaining because there is no evidence on the record that any employees were impacted by closure of the Shop other than the employees identified by Respondent prior to November 15. Respondent asserts that the Union's claim that there is a much larger group of employees affected by the Shop closure is "false" and unsupported by any evidence in the record. Respondent's arguments would be pertinent if the information requested by the Union were not presumptively relevant, as information which is not presumptively relevant requires a showing of potential relevance. The requested information related directly to bargaining unit employees, and I find it was presumptively relevant information to which the Union is entitled. Indeed, the fact that Respondent and the Union disagree about the Shop closure impact on employees underscores the necessity for production of the information. [15] Therefore, the issue before me is not whether employees were impacted by the Shop closure but rather whether the presumptively relevant information was produced in a timely manner.

[15] "The Union was not required to show that the information which triggered its request was accurate or ultimately reliable . . . ." *Shoppers Food Warehouse,* 315 NLRB 258, 259(1994)(citation omitted). "We further note that the Union was not required to accept the Respondent's response that [the alleged alter ego] was a totally separate operation . . . . By the same token, the Union was entitled to conduct its own investigation and reach its own conclusions about the applicability of the agreement." *Id.*

Although the information sought was not maintained by Respondent in the requested format in the ordinary course of business, Respondent nevertheless was obligated to provide the information "in a manner not so burdensome or time-consuming as to impede the process of bargaining."

Respondent urges that because it does not maintain month-by-month records or reports that specifically reflect what dates employees worked in the Shop or that reflect dates when an employee assigned to the Shop was assigned to work outside the Shop, it did not violate the Act by failing to provide nonexistent information. However, Respondent does not deny that the requested information may be gleaned from existing records. In fact, in April 2007, Respondent provided a voluminous document to the Union which, it asserted, contained the requested information.

In *Cincinnati Steel Castings Co.,* 86 NLRB 592, 593 (1949), the Board held,

> However, we have not held, nor do we now hold, that the employer is obligated to furnish such information in the exact form requested by the representative. It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining.

Lack of information in the specific format requested by the Union is not a defense to delay in production of information where, as here, there is neither evidence that Respondent attempted to assimilate the information from records available to it nor evidence that Respondent contacted the Union to discuss any burden in furnishing the information in the requested format. See, e.g., *United States Postal Service,* 350 NLRB No. 43, fn. 2 (2007). Finally, I note that the issue of whether production of voluminous documents in April 2007 satisfied Respondent's duty to provide information is not before me.

The information was requested in good faith.

A request for information must be made in good faith. It is presumed that a union acts in good faith until the contrary is shown. If at least one reason for the information can be justified, the demand is deemed to be made in good faith. *Hawkins Construction Co.,* 285 NLRB 1313, 1314 (1987), enf. denied on other grounds, 857 F.2d 1224 (8th Cir. 1988), and cases cited therein.

Respondent argues that the Union's correspondence reveals that the Union's requests for Shop closure information were made in bad faith. Thus, Respondent notes that it timely responded to the initial September 27 correspondence requesting effects bargaining and information in aid of effects bargaining. Respondent further notes that it accepted several dates proposed by the Union for effects bargaining sessions and gave the Union what it believed to be all of the requested information. At this point, Respondent avers, the Union could have come to the table and begun effects bargaining. Respondent further insists that the Union's failure to begin any investigation with the information provided illustrates the Union's lack of good faith.

I find that the Union acted in good faith in making the request for information on November 15, 2006 and January 22, 2007. The Union's requests involved relevant information needed to properly represent the former Shop employees. The Union's disagreement with Respondent regarding the information necessary to negotiate the Shop closure issues led to protracted correspondence. Ultimately the Union stated that it

could not meet to negotiate the issues until the information request was satisfied. Although the situation was frustrating for all parties, the Union's failure to meet for bargaining does not indicate that it was engaged in stalling tactics or bad faith in requesting information or in asserting its inability to bargain without the information. See, e.g., *Metta Electric,* 349 NLRB No. 101, fn. 1 and slip opinion at p. 5 (2007); *Mission Foods,* 345 NLRB No. 49, slip opinion at p. 1 (2005); cf. *ACF Industries LLC,* 347 NLRB No. 99, slip opinion at pp. 3-4 (2006)(delay in providing information requested for purpose of stalling and to avoid finding of impasse not violative).

Respondent's Delay in Providing the Information was Unreasonable

Respondent has presented no evidence warranting the delay in providing information. Although Respondent disagreed with the Union's analysis of staffing in the Shop, there was no evidence of difficulty in understanding the Union's request. See, e.g., *Decker Coal Co.,* 301 NLRB 729, 739-740 (1991). There is no evidence that Respondent's employees were laboring for weeks or months to assemble the information. See, e.g., *West Penn Power Co..,* 339 NLRB at 587, *supra*. There were no confidentiality concerns. See, e.g., *Dallas & Mavis Forwarding Co.,* 291 NLRB 980, 982 (1988). These cases, cited by Respondent, are clearly distinguishable.

Applying the criteria in *West Penn Power Co., supra,* 339 NLRB at 587, the information sought was not complex. Only eight months of information was at issue. This does not appear to be an excessively large amount of data. The information was readily available to Respondent, although not in the exact format requested by Respondent. Looking at the totality of the circumstances, I find that Respondent did not make a good faith effort to respond to the request as promptly as circumstances allowed.

III. Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

IV. Recommended Order

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, National Steel and Shipbuilding Company, San Diego, California, its officers, agents, successors, and assigns, shall

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

    a. Refusing to provide timely responses to the Union's requests for information regarding the Sean McCurdy grievance and the Sheetmetal Shop closure that were necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees.

    b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

    a. Within 14 days after service by the Region, post at its facility in San Diego, California, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2006.

    b. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

It is further ordered that paragraph 9(b) of the complaint is dismissed.

Dated, Washington, D.C. January 18, 2008

_____
Mary Miller Cracraft
Administrative Law Judge

[17] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to provide timely responses to requests of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, for information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our employees.

NATIONAL STEEL AND SHIPBUILDING COMPANY

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor

Los Angeles, California 90017-5449

Hours: 8:30 a.m. to 5 p.m.

213-894-5200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.